SUPREME COURT, U. S.
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APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 513

IN THE MATTER OF
DAN A. SPENCER,

Appellant,

APPEAL FROM THE SUPREME COURT OF LOUISIANA

FILED AUGUST 25, 1969
JURISDICTION POSTPONED FEBRUARY 2, 1970

SUPREME COURT OF THE UNITED STATES

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IN THE MATTER OF DAN A. SPENCER,

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APPEAL FROM THE SUPREME COURT OF LOUISIANA

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DOCKET ENTRIES

[1]

LEWIS P. HOPKINS, JR. — No. 182,404

v. — First Judicial District Court

DIANA McGINTY HOPKINS — Caddo Parish, Louisiana

Jan. 10, 1968 Default

Mar. 20, 1968 On application to confirm default, evidence adduced, closed and matter submitted. Judgment rendered in favor of Defendant rejecting the demands of the Plaintiff (see decree). (Judge Dixon)

Mar. 22, 1968 Motion for new trial limited to rehearing filed March 21, 1968. Motion to recuse filed March 21, 1968 by Plaintiff.

Mar. 27, 1968 Motion and order filed March 22, 1968 by Plaintiff to fix time for filing Writs of Certiorari and Mandamus to the Supreme Court of Louisiana on or before March 27, 1968.

Mar. 27, 1968 Motion for recusation filed March 26, 1968 by Dan A. Spencer.

Mar. 27, 1968 Notice of intention to apply for writs of certiorari prohibition and mandamus filed this day by Dan A. Spencer.

Mar. 29, 1968 The Court ordered the rule returnable this day continued until the determination of proceedings # 13,676 filed in the U.S. Federal Court, Western District of Louisiana. (Judge Dixon)

Apr. 3, 1968 Motion and order filed April 2, 1968 to have contempt proceedings transferred to the Twenty-Sixth District Court for hearing.

Apr. 17, 1968 Certified copy of order from Supreme Court, State of Louisiana assigning Judge R. B. Williams of the Tenth Judicial District Court to hear contempt rule

filed in this case and ordering that the previous order issued that Judge Enos C. McLendon, Jr. hear this rule be revoked and set aside.

Jun. 10, 1969 Regularly taken up on rule to show cause. Mr. Dan A. Spencer present in Open Court and stating to the Court that he would represent himself in this matter. Response to rule filed by Mr. Spencer. The Court ruled that the testimony of the District Judges summoned as witnesses would be inadmissable. Case was argued by Mr. Spencer, closed and matter submitted. Judgment rendered finding Mr. Dan A. Spencer guilty of contempt of Court. The Court afforded Mr. Spencer an opportunity to purge himself of contempt, which he declined. The Court sentenced Mr. Dan A. Spencer to serve 24 hours in jail and to pay a fine of $100.00 and costs. Mr. Spencer gave notice of applying for writs of certiorari to the Supreme Court of Louisiana. The Court ordered a stay of execution of sentence until Friday, June 13, 1969 for said application. (Judge Williams)

[2]

Jun. 27, 1969 Certified copy of order from Supreme Court of Louisiana denying writ of certiorari applied for by Dan A. Spencer. Motion and order filed June 26, 1969 by Dan A. Spencer to stay execution of sentence for a period of 30 days to allow him to apply for writ of certiorari to the United States Supreme Court.

Aug. 20, 1969 Certified copy of order from Supreme Court of the United States staying the execution of sentence imposed by First Judicial District Court for the timely filing of an appeal or petition for writ of certiorari filed August 18, 1969.

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[Caption Omitted in Printing]

PETITION

The petition of LEWIS P. HOPKINS, JR., a resident of Caddo Parish, Louisiana, with respect shows:

1.

That he was married unto the defendant herein, DIANA McGINTY HOPKINS, in Shreveport, Louisiana, on April 20, 1963.

2.

That the matrimonial domicile was immediately established in Shreveport, Caddo Parish, Louisiana, where it has since remained.

3.

That born of the union of petitioner and defendant was one child, Patrick Evan Hopkins, born November 18, 1964, said minor child being in the custody and control of defendant and petitioner desires that defendant be awarded the temporary, provisional and permanent custody of the said minor child, petitioner to pay unto defendant, for the support of the said minor child, the sum of SEVENTY-FIVE AND NO/100 ($75.00) DOLLARS per month.

4.

That on November 25, 1967, defendant asked petitioner to leave, stating that if he did not do so that she would leave.

5.

That petitioner has not condoned the actions of the defendant and the same renders further living together with her insupportable.

6.

That due to the aforementioned constructive abandonment, petitioner desires and is entitled to a separation from

[4]

bed and board "a mensa et thoro" between them.

WHEREFORE, plaintiff prays that the defendant, DIANA McGINTY HOPKINS, be duly cited to appear and answer this petition, that she be served with a copy of the same, and after due proceedings and legal delays had, that there be judgment herein in favor of plaintiff, LEWIS P. HOPKINS, JR., and against defendant, DIANA McGINTY HOPKINS, decreeing a separation from bed and board "a mensa et thoro" between them.

/s/ Dan A. Spencer
Suite 7, Dixie Building
1639 Kings Highway
Shreveport, Louisiana
Attorney for Petitioner

TRANSCRIPT OF TRIAL ON CONFIRMATION OF DEFAULT

[31]

[Caption Omitted in Printing]

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EVIDENCE adduced and proceedings had on the trial of the above entitled cause at Shreveport, Louisiana, on March 20, 1968, before His Honor, JOHN A. DIXON, JR., Judge of the First Judicial District Court, in and for the Parish of Caddo, State of Louisiana.

APPEARANCES: MR. DAN SPENCER, Counsel for the plaintiff;

MRS. LAURINE K. BROWN, Official Court Reporter.

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PROCEEDINGS

MR. SPENCER: If the Court please, this is a suit for separation based upon abandonment. The defendant is present in court, Your Honor, although unrepresented by counsel, and she is agreeable to the amount mentioned by way of child support.

LOUIS P. HOPKINS, JR.

plaintiff, called as a witness on his own behalf, after being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SPENCER:

Q. State your name and address, please. A. Louis P. Hopkins, Jr., 2045 Flournoy-Lucas Road.

Q. To whom are you married? A. Diana M. Hopkins.

Q. When and where were you married to her? A. Here in Shreveport.

Q. And when was that, sir? A. March 20, [illegible].

Q. Do you have any children? A. One.

Q. One child was born of the marriage? A. Yes.

Q. Would you tell the Court, please, what happened on November 25, 1967? A. Well, we had an argument and everything, and it was decided either she leave or I leave and so I thought for the benefit of her and the child that I left. And a couple of days later I came home and she had left and the house was vacant. My clothes were there.

Q. Since that time have you asked her to return to live with you? A. Yes.

Q. And what was her answer? A. No.

Q. Mr. Hopkins, are you agreeable to her having custody of the child and paying Seventy-five Dollars per month child support? A. Yes.

MR. SPENCER: Does the Court have any questions?

THE COURT: No, but I can't grant you a separation on that evidence.

MR. SPENCER: Your Honor, that is not all the evidence.

THE COURT: I can't grant you a separation as long as I believe this testimony.

(Witness excused.)

CHARLES EDWARD ANDERSON

called as a witness on behalf of the plaintiff, who, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SPENCER:

Q. State your name and address, please. A. Charles Edward Anderson, the Third, 2048 Hawthorne Lane, Red

Q Mr. Anderson, do you know the plaintiff in this action, Mr. Louis P. Hopkins? A. Yes.

Q Do you also know his wife, Diana Hopkins? A. Yes.

Q Do you know whether or not they have lived together since November 25, 1967? A. They have not.

Q How do you know that, Mr. Anderson? A. Because he has lived with me since that date.

Q You share an apartment now? A. Yes, sir.

Q. Have you ever had an occasion to overhear a conversation overhear conversations between Mr. Hopkins and his wife relative to a reconciliation? A. Yes, sir, on a couple of occasions.

Q Well, what have you heard? A. Well, he would call her and ask her if she would have him back and she said no, if no over with.

MR SPENCER Does the Court have any questions?

THE COURT No.

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(Witness excused.)

MR SPENCER Would the Court like to hear from the defendant in the case? She is present in court.

THE COURT No. The suit is based on abandonment. The testimony of the plaintiff was that he and his wife had an argument and they decided that either he leave or she leave, so he left. That is not an abandonment. The demands of the plaintiff are rejected.

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CERTIFICATE

I, Mrs. Laurine K. Brown, Official Court Reporter, First Judicial District Court, in and for the Parish of Caddo, State of Louisiana, do hereby certify that the above and foregoing 4 pages of typewritten matter constitute a true and correct report and transcript of the testimony and proceedings had on the trial of this cause at the time and place hereinbefore set out on page 1 hereof.

IN WITNESS WHEREOF I have hereunto affixed my signature at Shreveport, Louisiana, this the 21st day of March, 1968.

/s/ (Mrs.) Laurine K. Brown,
Official Court Reporter.

[7]

[Caption Omitted in Printing]

MOTION AND ORDER FOR RECUSATION

NOW INTO COURT, through undersigned counsel, comes LEWIS P. HOPKINS, JR., plaintiff in the above captioned matter, who with respect represents:

1.

That the instant proceeding is an uncontested suit for separation from bed and board based upon abandonment.

2.

A preliminary default was entered herein on January 5, 1968.

3.

That on March 20, 1968, the instant proceeding was brought before the Court for confirmation of default and despite overwhelming evidence of the abandonment of petitioner by defendant, the trial judge, Honorable John A. Dixon, Jr., dismissed plaintiff's suit giving as the oral reasons therefor that the plaintiff had not proven a case of abandonment.

4.

The plaintiff herein, LEWIS P. HOPKINS, JR., and his chief witness in this case, Mr. Charles Anderson, III, are presently engaged in the process of attempting to have Judge Dixon, removed from office as being unfit therefor

by virtue of corruption, favoritism, oppression and misfeasance in office.

5.

Plaintiff alleges, on information and belief, that Judge Dixon, First Judicial District Court for Caddo Parish, Louisiana, is therefore interested in the cause in that he is so biased and prejudiced and harbors such personal animosity toward plaintiff in that he would be unable to give a

[8]

fair trial in this matter.

6.

Plaintiff has applied for a new trial limited to rehearing in this matter and alleges, on information and belief, that for the reasons set out hereinabove, the Honorable John A. Dixon, Jr., would be unable or unwilling to give a fair and impartial rehearing in this matter.

7.

Plaintiff alleges, on information and belief, that Judge John A. Dixon, Jr., First Judicial District Court for the Parish of Caddo, is interested in the cause in that he is so biased and prejudiced and harbors such personal animosity toward counsel for plaintiff that he was unable or unwilling to give a fair trial in this matter.

8.

Although counsel for plaintiff was aware of animosity on the part of the trial judge herein prior to the attempted confirmation of default, he was not aware, and the plaintiff was not aware, that the aforesaid animosity, bias, prejudice and interest would prevent a fair trial in this matter.

WHEREFORE, plaintiff respectfully prays that the Honorable John A. Dixon, Jr. recuse himself in this cause or refer this motion to another judge or a judge ad-hoc for a

hearing in accordance with Article 155 of the Louisiana Code of Civil Procedure and the rules of the First Judicial District Court.

/s/ Dan A. Spencer
Suite 7, Dixie Building
1639 Kings Highway
Shreveport, Louisiana

Attorney for Plaintiff

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[Caption Omitted in Printing]

ORDER FOR RULE TO SHOW CAUSE

In the above numbered and entitled cause.

IT IS ORDERED that a rule issue herein directed to Dan A. Spencer, attorney for plaintiff, directing him to show cause on Friday, March 29, 1968, at 10:00 a.m. in the courtroom of Section "B", First Judicial District Court in and for Caddo Parish, Louisiana, why he should not be held in contempt of court for the following, to-wit:

That on March 21, 1968, Dan A. Spencer did file a pleading in the above numbered and entitled cause which contained scandalous, insulting, and abusive language in irrelevant criticism of the judge of said court, which pleading is attached hereto and made a part hereof, and which language, particularly in paragraph four thereof, impairs the dignity of the Court and the respect for its authority, contrary to the law of the State of Louisiana.

THUS DONE AND SIGNED on this, the 26th day of March, 1968.

/s/ John A. Dixon, Jr.
District Judge

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[Caption Omitted in Printing]

RESPONSE TO RULE

NOW INTO COURT comes DAN A. SPENCER made respondent by an Order for Rule to Show Cause why he should not be held in contempt of Court, issued on the 26th day of March, 1968, by John A. Dixon, Jr., then District Judge of the First Judicial District Court, Parish of Caddo, State of Louisiana, who with respect shows:

1.

The original order for rule to show cause herein is no longer valid as the judge issuing the same is no longer a judge of this Honorable Court and all of the issues raised thereby are rendered moot and irrelevant.

2.

Another Judge, of another Court, has no authority to issue a new rule to show cause against respondent for an alleged contempt committed against a Judge of a different court.

3.

Respondent is charged with apparent violation of the Louisiana Code of Civil Procedure Article 222(3). The foregoing Article provides that a direct contempt of court includes

> (3) "Use of insulting, abusive, or discourteous language by an attorney or other person in open court, or in a pleading, brief, or other document filed with the court in irrelevant criticism of another attorney or of a judge or officer of the court."

The Order for Rule to Show Cause provides that the alleged contumacious conduct consisted specifically of the language contained in Paragraph 4 of a Motion to Recuse filed in this case. Paragraph 4 of the said Motion provided:

> "The petitioner herein, LEWIS P. HOPKINS, JR. and his chief witness in this case, MR. CHARLES ANDERSON, III are presently engaged in the process of attempting to have JUDGE JOHN A. DIXON, JR. removed from office as being unfit therefore for virtue of corruption, bias, prejudice and misfeasance in office."

The foregoing allegations of the Motion to Recuse alleged only the actions of other persons which would result in bias, prejudice and animosity on the part of a trial judge. The allegations formed a necessary part of any Motion to Recuse and were thus not only relevant and material but an absolute requirement of any such Motion. This takes it out of the provisions of Article 222(3).

Moreover, this did not constitute the use of insulting or discourteous language by an attorney in criticism of a judge but only alleged the actions of other persons. The Motion to Recuse did not contain allegations regarding the truth or falsity of MR. HOPKIN'S or MR. ANDERSON'S charges against Judge Dixon.

Further, the aforesaid allegations of the Motion to Recuse constituted only a description by an attorney of actions by other persons. Such a description, where relevant and material to the pleading in which it is contained, as is clearly the case here, could never constitute a contempt under Article 222 of the Louisiana Code of Civil Procedure.

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In further defense to the rule to show cause, respondent pleads the truth of all of the charges brought against Judge Dixon on the Motion to Recuse. The hereinabove described

expressions by respondent are a constitutionally protected exercise of free speech.

5.

The Order for Rule to Show Cause herein was issued by then JUDGE JOHN A. DIXON, JR. with the knowledge that the conduct

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of the respondent did not in any respect constitute a contempt of Court and with no hope of securing a valid conviction of respondent. JUDGE JOHN A. DIXON, JR. acted out of personal animosity and bias toward respondent in an attempt to summarily impose an illegal punishment and to discourage constitutionally protected and truthful criticism of himself.

WHEREFORE, respondent prays that the rule issued herein directed to him be withdrawn, recalled and set aside.

Dan A. Spencer
690 East Kings Highway
Shreveport, Louisiana

TRANSCRIPT OF PROCEEDINGS ON CONTEMPT RULE

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[Caption Omitted in Printing]

Proceedings had in rule to show cause before His Honor R. B. Williams on the 10th day of June, 1969, in the courtroom of the Court of Appeals, Shreveport, Louisiana.

APPEARANCES:

MR. DAN A. SPENCER, respondent.

Ray J. Hanrahan, court reporter.

THE COURT: All right, Mr. Spencer, we will proceed with the matter which was originally in the case of Hopkins versus Hopkins. Do you have your file?

MR. SPENCER: Yes, sir.

THE COURT: Mr. Spencer, are you representing yourself?

MR. SPENCER: Yes, sir, I am.

THE COURT: This, shall we say, will be between yourself and this Court?

MR. SPENCER: Yes, sir.

THE COURT: I do not think that there is any other party at interest other than the official body of the Court, as I see it, and this Court is to pass on the question of whether or not in making the filings and addressing it to the Court, as was done in this case, as I will say in the Hopkins versus Hopkins case, consists of a contempt of the body to which it was addressed. I am going to first address myself to your response to the rule. The response to the rule indicates a

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question by you of the type of procedure; this is, the continuation of the rule and the resetting of it by this Court.

MR. SPENCER: Yes, sir, that's right.

THE COURT: And then you address yourself secondly in your response to the rule that, to use your words, that you did not use the words as if they were your words but an expression that someone else was to have made. And thirdly, that even if it were considered an expression of yours that the words within themselves and the addressing of them to the Court was not intended to say that the Court itself was guilty of these particular items but that it was alleged that it was to be addressed to show by a third person that there was evidence. Am I interpreting you correctly?

MR. SPENCER: I would differ in only one respect with your summation of the response, and that is this: The allegations in question came in a motion to recuse, and it is my contention that my description of the activities of other persons in attacking Judge Dixon and his continuing to sit on the bench in this particular case did not constitute such an attack by me for which I could be punished for contempt, but rather a privileged communication in that there were grounds for recusation of Judge Dixon in the case to indicate bias on his part, not toward me but toward the people I represent, and I would suggest that is an important distinction.

THE COURT: But in part of your allegations you involve yourself by saying that as a result of the apparently previous developments that you attributed to the Judge it shows such personal animosity toward you that it brings about a distinction in his viewing the matter to the extent that he would pre-judge the matter as against you rather than upon the merits of the

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case, and that is the allegation made in the motion for recusation but attributed to someone else as you are representing it. Is that your position too?

MR. SPENCER: Your honor, I agree that there is such an allegation in the motion to recuse but since it was not

set forth in the rule to show cause, I assumed that it was not material to this. Only one paragraph of the motion to recuse is set out in the rule to show cause.

THE COURT: We can't overlook anything, Mr. Spencer, in this matter, because it is both material to the Court and also material to you. And, of course, I view every word as a very material item, particularly when it is in the province of whether or not you have violated shall we say your oath of respect. Now, since I have clarified that issue the issue may stand, and I will first pass on this rule. If you have anything further to say on your response to the rule I will be glad to hear it.

MR. SPENCER: I would appreciate an opportunity to argue some points which I think will probably come before any eventual hearing.

THE COURT: Yes, sir, all right.

MR. SPENCER: First, as pointed out, Judge Dixon is no longer a member of the Court and in view of the fact that the allegation was directed to him personally I would submit the issue is now moot. Further, I would submit that the fact that a rule to show cause is issued and not held at the time set forth in the rule requires the issuance of a new rule before any action can be taken. I have not been served with notice to appear and show cause on this date. I was notified orally by the Clerk's office, admittedly, but I was not served, and that is required by the Code of Civil

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Procedure in the provisions dealing with summary proceedings. What is true on a summary proceeding in an ordinary civil case is not necessarily true with a contempt proceeding, which is pointed out in the brief. Contempt proceedings are subject to strict construction, just as are criminal proceedings. In fact, the Code of Civil Procedure specifically provides that only cases which are defined as contempt are to be considered as such. We don't have an

Louisiana the general rules of contempt which are found in many jurisdictions. We have a strict statutory form of offense and the contempt is limited as to what is defined by the statute as contempt. I will point out further, in view of what Your Honor stated a moment ago about considering all of the motion to recuse, I have no objection to defending myself on the charges with respect to part of that, but if contempt proceedings are subject to strict construction and the Code must be strictly followed, well, in that case I suggest that a rule to show cause must be issued against me charging me with contempt by these other matters the Court has referred to. In view of the fact that they were not contained in the rule to show cause, I didn't think it was necessary to refer to that here.

Going on to the issue of just what is the contempt here, or what is the allegation, I would point out that any criticism which the Court might find in the motion to recuse is pertinent and relevant, and the definition of contempt in Article 222, Section 3, requires that the criticism of the Judge be irrelevant.

Now I have cited two cases in the memorandum in support of this response to the rule which dealt with identical situations we have here today. In State v. Simone and State v.

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Nunez, both decided by the Supreme Court of Louisiana, the Court held that allegations in the motion to recuse were necessary and basis for the recusal of the Judge. In fact, as I would point out, in a previous attempt to recuse Judge Dixon another Judge of the First District Court overruled the motion for the very reasons that we did not set out the grounds for the recusal. We had to in his opinion state why he was biased and prejudiced and couldn't try the case. It is a necessary allegation, certainly, it is a pertinent allegation. And as pointed out in State v. Simone and State v. Nunez, although the trial judge may find that unpleasant,

THE COURT: Mr. Spencer, the Court, of course, has done a good bit of research himself. This in its entirety was in the newspapers. And the Court is aware of the severity of a contempt made before any Court and to anyone who is a practicing attorney, like yourself, and the Court has decided that it would not be admissible to have witnesses on the question of what may have taken place outside and happened subsequent to the filings. The Court must take into consideration only the filings themselves as to what impact they would have between counsel and the Court. Now, the Court will make this ruling insofar as the anticipated calling of witnesses in this field of what you have indicated to the Court. I will rule that if the witnesses were called I would not permit their testimony to be entered into the record. The only matters that may be entered into are, first, your response to the rule in which there is no attempt on your part

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to say you didn't sign it or that you weren't there or something of that sort, and, second, no attempt on your part to disavow the instrument in some part or other. Those two matters you more or less indicated to the Court your position on. I am not attempting to have you commit yourself because what you have stated to the Court is the truth, exactly what you have done. Now it becomes this Court's duty to advise you as to what my attitude is or what my decision is towards the filings made by an attorney. You are in a different category than say the witnesses or the layman. Now for this ruling, you have the privilege, of course, of taking whatever exception you have.

MR. SPENCER: If Your Honor please, I don't mean to be discourteous and interrupt you, but some of the things you referred to I think are matters on which we have very little jurisprudence. I have found some. It is not in my brief because I didn't anticipate this question of calling witnesses. But if I may, I would like to refer to the Code

THE COURT: The Court feels he will be glad to see what you have to offer.

MR. SPENCER: Thank you, Your Honor. I don't have this set out but if I can have two minutes I can find it.

THE COURT: The Court will recess for five minutes.

(After said recess the proceedings were resumed as follows:)

THE COURT: Mr. Spencer, do you have something you wish to show the Court?

MR. SPENCER: Yes, sir, Your Honor, I would like to point out one further case which is not contained in my brief. The case is Louisiana State Board of Medical Examiners v. England contained in [illegible] Louisiana, [illegible] In that case it was

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held that a rule for contempt must state specifically the time which the alleged contempt occurred or be quashed. In other words I am referring to the rule for contempt in the specifications one attack of the motion for [illegible] the second case I would like to cite to the Court is Mr. Stewart's Rural Life Insurance Co. which is not contained in my brief. In that case the Court held that [illegible] committed in the actual presence of the Court [illegible] punished summarily and that all other cases it must [illegible] and allow the person charged to [illegible] and allow the person charged to [illegible] available.

THE COURT: I think [illegible]

avowal of the filing of the document that you didn't do it, that someone else did it. Now, those are the two points that the Court feels would be a proper area for the Court to check into.

Now, if you have nothing else, the Court rules that the testimony of the subpoenaed witnesses, who, as I understand from you, are the District Court Judges of the First Judicial District Court, comprising, is it four men?

MR. SPENCER: Yes, sir.

THE COURT: Do you wish to name them, Mr. Spencer? If you do, I will let them go on the record.

MR. SPENCER: I don't believe it is necessary, Your Honor.

THE COURT: The Court rules that this testimony would be inadmissible. The Court has the record before it, based upon your response to the rule and your memorandum, which the Court has read rather hurriedly but with the intent of trying to understand your position. The Court rules that this testimony would not be admissible.

Now, did you have anything further to say?

MR. SPENCER: No, sir. Your Honor, only to make the offer of proof to the effect that I have stated earlier, and since the Court ruled it inadmissible, I will rest my case.

THE COURT: All right. Mr. Spencer, the Court will address these remarks completely to you and to no one else, and this is what the Court finds. The Court finds that there is an instrument subsequent to the legal or a matter seeking a separation from bed and board which was, I think, identical in the terminology of a motion and order for recusation, although it was in the name of your client, which in a sense you are the alter ego of that person. The motion of this motion and order for recusation addressed to a member of the Court, of the First Judicial District Court, who was the trial judge, the Honorable John V. Brown, Jr., and the Court paraphrases at this point in time to your document

that the District Judge is no longer in the office. The thrust of your argument is that what was said by you or through your client addressed to a person. That is not your privilege. Your privilege in addressing a matter to a representative of the State and the Judiciary means that you are addressing it to the office that is occupied by the individual. You, as a member of the Louisiana State Bar are not as privileged as some other persons are because of your high position and you are an officer of this

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Court. When you use the words in addressing it to the District Judge that he is guilty of [illegible] by virtue of corruption, favoritism, oppression and mismanagement of office, when you use those words you have addressed to that Court an expression which is defamatory of not only the person but the Court. In doing so you bring about that area of reaction not only to the members of the bar but to the general public, an area of condemnation without any necessity.

In this particular case we had a suit for deportation heard and heard. The rights of the parties, as you well know, may be protected by a proper appeal from a judgment whether it was rendered in the manner in which you have expressed it or not. So we shall not [illegible] by virtue of corruption, favoritism, oppression and mismanagement of office. To do so would create immensely [illegible] and interest would [illegible] that would present a [illegible] of the matter. It is only when you are attributing to a member of the Judiciary and a member of the Federal Judiciary [illegible] that he died already indicted [illegible].

[illegible]

m. first, the rule which you have indicated should be very technically carried out. The delay of the first rule was a matter which addressed itself to you and you alone because you found that you should proceed through a proper device

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of injunctive process which upset the first hearing and it would be giving to you the real control if a new rule had to be issued. And therefore, the Court rules that the hearing is proper and of course, what follows the Court deems to be proper.

The question now presented for me to answer and which I will start out by saying it is my opinion that they are contemptuous within their nature, that the statements contained in your motion to recuse speak for themselves. They are, as stated in one of our other famous cases, defamatory and there is no necessity for me to apprise you because you were the author thereof and you know what the contempt was.

It is not proper to address a member of the Court in that manner, because you are addressing the Court saying he has decided before he has heard the case and that he has reached a decision regardless of what evidence you have been able to bring into Court and that he in his capacity as District Judge was willing to misconstrue and determine in advance what the conclusions were going to be that were reached in this particular case.

It isn't always an important vehicle although it was important to Mr. or Mrs. Hopkins for a separation but the case itself is a rather simple matter. And the use by counsel of abusive language addressed to the Court cannot be overlooked and it does not mean simply that an attorney because of his relationship with the Court can excuse himself because he signed as it he was representing the party. Our Courts have held that even where it is signed in that manner that a duly qualified and licensed attorney

who files an instrument which within itself is defamatory and contemptuous of the Judiciary to which it was addressed is likewise in contempt of the

Court

The Court finds that there is contempt Mr Spencer and I therefore will address myself to you I believe in such instances in which a Court finds one guilty of contempt that is that person in turn wishes to address the Court in mitigation to attempt to or to actually purge one's self of contempt I am sure that would grant that privilege to you And I now call upon you since the Court has ruled that you are in contempt of Court I ask you do you wish to address yourself to the Court to attempt to purge yourself of such contempt or do you not choose to do so?

MR SPENCER I have no further argument to make Your Honor

THE COURT Mr Spencer Would you please stand in front of the Court I am sure that you are fully aware of what the Court is faced with and the onerous task that I have who lie no knowledge of your life and no knowledge of your family life no knowledge of your practice that was known to an individual that is before the and it is not [illegible]

The Court feels though that you serve in a high office and in that office you owe yourself the duty of being fully aware of and to anticipate the things that bring disrepute upon the bar and upon the bench and upon yourself And in pursuit this Court feels that it can only do what the law as it does provide Therefore the Court in finding [illegible] guilty of contempt follows the provisions of the law with reference thereto The Court therefore is limited in what he can say here and has very carefully set out [illegible] The Court therefore sentences you Mr Dan V Spencer [illegible]

hours in the District Jail in the Caddo Parish Jail and fines you the sum of $100 and costs.

MR. SPENCER: If the Court please, I would like to move for a stay of execution of sentence in order to allow time for an application for writs of certiorari to the Supreme Court of Louisiana.

THE COURT: That is granted.

MR. SPENCER: Thank you, Your Honor.

THE COURT: You have the time prescribed by law. I think that is a certain number of hours, isn't it?

MR. SPENCER: I am not aware of the time. There are two procedures I believe that can be followed, and one requires this Court to fix the time within which I can make the application. I should think that 15 days would be ample time, Your Honor.

THE COURT: I think that is excessive. The Court will grant you through Friday, June 13th, 1969, in which to apply for writs of certiorari to the Louisiana Supreme Court. Is that what you are applying for?

MR. SPENCER: Yes, sir. I will be applying to them. I take it once the writs are filed with the Court, the application.

THE COURT: If they grant the writs then the hearing is, of course, set by the Supreme Court. But if they don't grant the writs, then you will be expected to, well, of course, you know what happens after that.

MR. SPENCER: Yes, sir.

THE COURT: All right. The Court will stand adjourned.

SUPREME COURT OF LOUISIANA
New Orleans, 70112

LEWIS P. HOPKINS, JR. : June 26, 1969

DIANA McGINTY HOPKINS : No. 49,925

In re: Dan A. Spencer applying for writ of certiorari

Writ refused.

There is no error of law in the ruling complained of.

s/ JWS
s/ JBE
s/ JBH
s/ WBH
s/ MEB

McCALEB, J., is of the opinion that the application should be granted.

SUMMERS, J., is of the opinion the writ should be granted.

A TRUE COPY
Clerk's Office
Supreme Court of Louisiana
New Orleans, June 26, 1969

s/ Harold A. [Illegible], Jr.
Deputy Clerk